

Recruiting, Legality, & Recognition of Volunteers

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Workers' Compensation

- In Utah, volunteers are not covered by workers' compensation unless specifically authorized by statute. *Gourdin v. Sharon's Cultural Education Recreational Association*, 845 P.2d 242, 245 (Utah 1992).

Utah Volunteer Government Workers Act

Volunteer Government Workers Act

- Utah Code §§ 67-20-1 through -8
- Definitions:
 - Volunteer: a person who donates service without pay or other compensation except expenses actually or reasonably incurred as approved by the supervising agency.
 - Does not include research subjects or compensatory service workers
 - Does include jurors or potential jurors for trials or grand juries

Volunteer Government Workers Act

- A volunteer is considered a government employee for purposes of:
 - Workers' compensation medical benefits
 - Operating a motor vehicle or equipment
 - Liability protection and indemnification
- Except that Volunteer Safety Officers and Volunteer Search & Rescue have separate requirements

Approval of Volunteer

- Before donating any service to an agency, the volunteer must be approved by
 - The chief executive of the agency or the authorized representative, and
 - The office of personnel having jurisdiction over that agency.
- However, the county sheriff may determine that search and rescue emergency situations require law enforcement action and approve a volunteer who offers to donate service for any law enforcement related activity conducted in response to the emergency.

Volunteer Safety Officers

■ Volunteer Safety Officer Definition

- Provides services as a volunteer under the supervision of an agency; and
- At the same time is
 - Exercising peace officer authority, or,
 - If a fire department, is on the rolls as a firefighter, not regularly employed as a firefighter by the supervising agency, and acting in a capacity that includes the responsibility for the extinguishment of fire.

Volunteer Safety Officers

- Considered a government employee for purposes of operating motor vehicles and equipment and liability protection.
- Considered a government employee for purposes of workers' compensation under Workers' Compensation Act and Utah Occupational Disease Act
 - Workers' Compensation benefits are the sole remedy for all injuries and diseases resulting from volunteer's services.
 - Average weekly wage computed as follows:
 - State's average weekly wage at the time of the accident or disease forming the basis for the claim

Volunteer Search & Rescue

■ Volunteer Search and Rescue Team Member Definition:

- Provides services as a volunteer under the supervision of the county sheriff; and
 - At the same time, is certified as a member of the county sheriff's search and rescue team; and
 - Acting in the capacity of a member of the search and rescue team of the supervising county sheriff.

Volunteer Search & Rescue

- Considered a county employee for purposes of operating motor vehicles and equipment and liability protection.
- Considered a county employee for purposes of workers' compensation under Workers' Compensation Act and Utah Occupational Disease Act.
 - Workers' Compensation benefits are sole remedy for injury and disease resulting from services
 - Average weekly wage computed as follows:
 - Average weekly wage of an entry-level deputy sheriff employed by the county sheriff at the time of the accident or disease

Compensatory Service Worker

- Definition: a person who performs a public service with or without compensation for an agency as a condition or part of the person's
 - incarceration,
 - plea,
 - sentence,
 - diversion,
 - probation, or
 - parole.

Compensatory Service Workers

- Considered a government employee for purposes of receiving workers' compensation medical benefits, which are the exclusive remedy for all injuries and occupational diseases provided under the Utah Workers' Compensation Act and the Utah Occupational Disease Act

Volunteer Facilitators

- Definition: a business or nonprofit organization that, from individuals who have a relationship with the business or nonprofit organization, such as membership or employment, provides volunteers to an agency or facilitates volunteers volunteering with an agency

Volunteer Facilitators

- Immune from liability for damages or injuries arising out of or related to the volunteer service of a volunteer provided by the volunteer facilitator to the agency, unless:
 - An action or omission of the volunteer facilitator is grossly negligent, not made in good faith, or made maliciously, and causes harm to a person or property; or
 - The volunteer facilitator fails to exercise due diligence in determining the fitness of a volunteer to provide voluntary service to the agency under circumstances that make the failure to exercise due diligence grossly negligent, not in good faith, or malicious.

Volunteer Experience Credit

- Volunteer experience can satisfy job requirements for certain employment opportunities
- Documented approved volunteer experience shall be considered in the same manner as similar paid employment for purposes of evaluating job applicants
- Dept. of Human Resources statewide rules governing
 - Designation of volunteer positions, and
 - Uniform process to document volunteer approval, use, and hours worked

Recruiting Volunteers

Recruiting

- Volunteers are considered the equivalent of government employees in many respects
- A government agency utilizing volunteers is not free from responsibility to ensure that the volunteers are behaving as responsible government employees
- Care should be taken to recruit responsible, skilled volunteers who will not expose the agency to liability

Recognizing Volunteers

Recognition

- Encourage more volunteers by recognizing those who go above and beyond expectations
- Formal recognition (awards dinner, official commendations, monetary rewards, etc.)
- Informal recognition (praise, expression of gratitude, integrating volunteers into the team)

Other Legal Issues

Government Records

- Can volunteers be an “at-risk government employee” for purposes of government records classification as private?
 - While the Volunteer Act does not specifically identify this as one of the purposes for which a volunteer may be considered a government employee, it may be wise to treat them as such because they experience the same circumstances that make a peace officer an “at-risk government employee” entitled to protections under GRAMA

Government Immunity

- Immunity for Persons Performing Voluntary Services Act, Utah Code § 63G-8-201
 - A person performing services on a voluntary basis, without compensation, under the general supervision of, and on behalf of any public entity, is immune from liability with respect to any decisions or actions, other than in connection with the operation of a motor vehicle, taken during the course of those services, unless
 - Such decisions or actions were grossly negligent, not made in good faith, or malicious.

Orr v. Uintah County

- 2011 UT App 235, 262 P.3d 437
 - Parents of detective killed in helicopter accident during search and rescue mission sued County alleging that the volunteer helicopter crew was negligent
 - Court dismissed claims against County where there were no facts to show that the County approved the helicopter crew as volunteers or approved their use during the search & rescue mission or in any way supervised the helicopter crew

Other Legal Issues

- First Amendment Rights
 - “We hold that Ms. Andersen’s termination from her employment position as an intern with the DOC because of her public comment on the DOC’s proposed changes in the sex offender treatment program implicated her First Amendment rights, and invoked the protections afforded by the *Pickering* balancing test. . . . Defendants argue that volunteers are not entitled to First Amendment protection under *Pickering*. We disagree. The exercise of free speech rights is not dependent on the receipt of a full-time salary.” *Andersen v. McCotter*, 100 F.3d 723, 727 (10th Cir. 1996).

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